IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 12710 of 2004

Between:

M/s Sri Aitha Shankar Lingam Fertilisers, Jammikunta, M.R.Jammikunta, Karimnagar Dist. rep. by its Proprietor, Aitha Shankar Lingam, S/o Rajaiah aged about 61 years, occ: Business , R/o Jammikunta, Karimnagar District

..... PETITIONER

AND

The Joint Collector (C.S) Karimnagar , Karimnagar District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly in a writ in the nature of Mandamus directing the 1st Respondent to entertain the appeal dt.8/10/1997 filed under section 6-C of E.C Act by reconstructing the appeal records which are not traceable in the office of 2nd respondent i.e., Joint Collector(CS), Karimnagar, which records are transmitted to the second respondent in Memo.No.1587/CS .1(1)/98 dt. 12/06/1998 of the Govt. of Andhra Pradesh, Food, Civil Supplies and consumer Affairs CS-I, Dept., and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner: MR.P.V.NARAYANA RAO

Counsel for the Respondent: GP FOR CIVIL SUPPLIES

The Court made the following:

ORDER:

Aggrieved by the order dated 08.09.1997 passed by the Joint Collector (C.S), Karimnagar under Section 6-A of the Essential Commodities Act, 1955 (for short, 'the Act') confiscating the entire seized stock of fertilizers belonging to the petitioner, the petitioner preferred an appeal on 08.10.1997 under Section 6-C of the Act before the Government of Andhra Pradesh, Food and Civil Supplies Department. However, the appeal was not entertained in view of the fact that the Essential Commodities Act (Special Provisions), 1991 stood lapsed on 31.08.1997. In the circumstances, the petitioner filed W.P.No.27263 of 1997 seeking a declaration that the action of the appellate authority in not entertaining the appeal, as arbitrary and illegal. This Court while taking note of the fact that there was no appellate authority existing as on that date, disposed of the Writ Petition by order dated 22-10-1997 directing that the appeal preferred by the petitioner before the Government shall be transmitted to the appellate Authority to be constituted. There was a further direction to the Joint Collector to release the stocks in favour of the petitioner on condition of the petitioner furnishing a Bank guarantee equivalent to the value of the confiscated stock to his satisfaction. Subsequently, the District & Sessions Court has been constituted as the Appellate Authority and in pursuance thereof the Government of Andhra Pradesh vide Memo dated 12-06-1998 forwarded all the Appeals received after October, 1997 to the Joint Collector, Karimnagar for onward submission to the District & Sessions Court. It is not in dispute that the Appeal preferred by the petitioner was also one of the

cases forwarded to the Joint Collector, Karimnagar. However, the petitioner alleges that the second respondent failed to transmit its appeal records to the District & Sessions Court. The petitioner made a representation on 30.12.2003 to the second respondent, but there was no response. Thereafter, the petitioner filed Criminal Petition S.R.No.2612/1 dated 22.10.2003 before the District & Sessions Court, Karimnagar, under Section 482 of the Code of Criminal Procedure requesting permission to reconstruct the appeal under Section 6-C of the Act. However, the said application was returned as not maintainable. Hence, this writ petition seeking the above relief.

I have heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies appearing for the respondents.

The fact that against the order of confiscation dated 08-09-1997, an Appeal under Section 6-C of the Act lies to the Court of the District & Sessions Judge, Karimnagar is not in dispute. As a matter of fact, the learned Government Pleader for Civil Supplies appearing for the respondents, under instructions, states that the Appeal preferred by the petitioner under Section 6-C of the Act along with similar other appeals have been received by the office of the respondent – Joint Collector, Karimnagar vide Government Memo dated 12-06-1998 for onward transmission to the District & Sessions Court, Karimnagar and accordingly the Appeal of the petitioner along with other appeals has been handed over in the Court of the District & Sessions Judge, Karimnagar on 12-08-1998 under acknowledgement.

A copy of the letter from the office of the respondent dated 12-08-1998 along with the list of Appeals filed under Section 6-C of the Act transmitted to the Court of District & Sessions Judge, Karimnagar which also bears an endorsement by the office of the District & Sessions Court, Karimnagar acknowledging the receipt of the said Appeals has been placed before this Court. In the circumstances, if the said record in the office of the District & Sessions Court is not traceable, the petitioner is justified in making an application to

reconstruct the Appeal records. Such an application cannot be held to be not maintainable, but ought to have been considered and decided by the Court of District & Sessions Judge, Karimnagar.

Accordingly, the writ petition is disposed of with a direction to the District & Sessions Court, Karimnagar, that on resubmission of the application made by the petitioner seeking permission to reconstruct the appeal filed by him under Section 6-C of the Act against the order of the Joint Collector, dated 08-09-1997, the same shall be entertained and appropriate orders shall be passed in accordance with law expeditiously.

Accordingly, the writ petition is disposed of. No costs.

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18.08.2004

Note: Communicate a copy of this

Order to the Court of District & Sessions

Judge, Karimngar.

(b/o)

VGB

To

1 The Joint Collector (C.S) Karimnagar , Karimnagar District

2 The District Sessions Judge, Karimnagar.

3 2CCs to the Government Pleader for Civil Supplies, High Court Buildings, Hyderabad (OUT)

4 2CD copies